CASE SUMMARY

Complaint against the Housing Department for failing to arrange an open tender for the provision of decoration debris removal service to a newly completed estate

The Complaint

The complainant and dozens of tenants of a newly completed estate lodged a complaint against the Housing Department (HD) for failing to arrange an open tender for the provision of decoration debris removal service to the estate, resulting in the tenants having to pay higher debris removal charges (DRC). The complainants also thought the Department was unfair to them in that it had allowed the cleansing contractor to collect the DRC from them at the time of intake.

Departmental Guidelines on Collection and Refund of Debris Removal Charges

2. According to the established guidelines of HD, DRC shall be borne by the tenants; debris removal service is usually undertaken by the cleansing contractor of the estate; DRC are agreed between the cleansing contractor and the approved decoration contractors (ADCs) and subject to approval by the Housing Manager of the estate.

3. Under an internal instruction of HD, Housing Managers are, in approving DRC, required to take into consideration the location of the nearest waste dumping point, the characteristics of substances to be removed and the labour cost, the number of small units in the estate and the prevailing rates charged on tenants in nearby estates in order to ensure that the DRC approved by them are reasonable.

4. It is also stipulated in the instruction that tenants have to pay the DRC at the time of intake. Tenants who choose the ADCs to decorate their flats can use the receipts of DRC as cash to offset all or part of the cost of decoration. For tenants who claim to have undertaken no decoration at all, the cleansing contractor will have to refund the DRC after intake and

certification by estate staff. According to another internal instruction, tenants are exempted from payment of DRC if they decide not to decorate their flats. Tenants who choose to employ another company to remove the debris can apply for refund of the DRC upon production of receipts issued by that company.

Reasons for Assigning the Debris Removal Service Provision to the Cleansing Contractor

5. For effective management of cleansing matters, HD deemed it essential to let the cleansing contractor of the estate provide the debris removal service. Shirking of responsibilities and thus delays might result, if cleansing and debris removal services were provided by different contractors. Moreover, if tenders were invited solely for the provision of debris removal service instead, the successful tenderer might not be able to provide a low-cost service whereas the cleansing contractor could do so by making use of its existing manpower and facilities to remove debris. From the points of view of economy and cost-effectiveness, the rates charged by the cleansing contractor

would certainly be lower than those charged by a company that had to employ workers and acquire equipment solely for debris removal.

Comments from This Office

Failure to Hold a Tender for Debris Removal Service

6. HD had already laid down guidelines instructing the Housing Managers to let the cleansing contractor of the estate provide the debris removal service. There was no need to hold a separate tender. Therefore, the Housing Manager acted in accordance with departmental guidelines and asked the cleansing contractor to provide the service. There was no maladministration.

7. Nonetheless, we had the following suggestions on the existing arrangements for fixing and approving DRC –

(a) DRC were shared on a “user pays” principle by the tenants. It was practically impossible for tenants to choose the contractor or negotiate the charges with the contractor before they moved into their flats. On the basis of this premise, we considered that HD had the responsibility to secure a suitable contractor and reasonable charges for the tenants;

(b) Under existing arrangements, the rates of DRC were fixed by the cleansing contractor and the ADCs. This was tantamount to accepting that the ADCs represent the tenants in the negotiation of the charges. We were of the view that the ADCs could at most be a referee who would make suggestions on the charges after estimating the debris likely to be generated;

(c) While we agreed that the Housing Managers of HD had professional knowledge, they might not be as good as the people in the trade in grasping information relating to cost-effectiveness (e.g. fluctuations in labour cost and landfill charges, etc.); and

(d) In the light of sub-paragraphs (b) and (c), we considered the existing arrangements for fixing and approving DRC over reliant on the check and balance effected by the ADCs and the Housing Managers on the cleansing contractor. It was likely that they might not be able to secure the most reasonable rates for the tenants due to negligence or other reasons. This might even lead to doubts about the Housing Manager’s decision and hence complaints from tenants.

8. This Office agreed that for effective management, it was essential that HD let the cleansing contractor of the estate undertake debris removal service. Nevertheless, HD should consider bringing competition into play. For instance, HD could categorize debris removal work as part of the cleansing work or as a separate cleansing item. Tenderers could specify in their tender proposals, en bloc or separately, their scales of charges and service profile in respect of the services for which tenders were invited. In so doing, HD could still award the contract for provision of both cleansing and debris removal services to the same successful tenderer in accordance with its established practice. Moreover, HD could adopt other feasible ways to bring in competition and let market forces regulate the charges. This might

bring about fairer and more reasonable charges for the tenants. Complaints could be avoided and the Housing Managers relieved of the duty of approving the DRC.

9. We considered HD's guidelines on DRC inadequate, in particular the parts on allowing the cleansing contractor to provide debris removal service and the fixing and approving of the DRC. Given that the Housing Manager had acted in accordance with departmental guidelines and had taken appropriate follow-up actions upon receipt of the complaints, The Ombudsman considered this complaint point **partially substantiated.**

Collection of Debris Removal Charges at the Time of Intake

10. In accordance with HD's guidelines, estate offices are required to make arrangements for the cleansing contractor to collect the DRC at the time of intake. Tenants might ask for refund of the DRC afterwards on the grounds that no decoration has been carried out or for some other reasons.

11. In fact, tenants would normally pay the DRC before they move into their flats. The community has accepted this either as a convenient arrangement or a usual practice of the contractor. There was nothing manifestly unjust. Moreover, HD had provided for the refund of and exemption from payment. This Office was of the view that HD had acted in accordance with departmental guidelines to make arrangements for the cleansing contractor to collect the DRC at the time of intake and there was no suggestion of impropriety. In the circumstances, The Ombudsman considered this complaint point **unsubstantiated.**

Conclusion and Recommendation

12. Overall, The Ombudsman considered the complaint **partially substantiated**. As to debris removal service, The Ombudsman recommended HD to consider bringing competition into play to let market forces regulate the charges, which would in turn bring about fairer and more reasonable charges for the tenants.

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